

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CORLIVEETHO MCMILLIAN,	:	CIVIL ACTION NO. 1:11-CV-2223
	:	
Plaintiff,	:	(Chief Judge Conner)
	:	
v.	:	
	:	
WARDEN JEROME WALSH, et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 28th day of January, 2014, upon consideration of the report and recommendation of Chief Magistrate Judge Martin C. Carlson (Doc. 149), recommending the court grant the defendants' motion (Doc. 130) for summary judgment and dismiss the *pro se* plaintiff's complaint (Doc. 1) for failure to prosecute pursuant to Federal Rule of Civil Procedure 41, see FED. R. CIV. P. 41(b) (permitting court to dismiss lawsuit if "the plaintiff fails to prosecute or to comply with these rules or a court order") and failure to oppose the motion, see LOCAL RULE OF COURT 7.6 ("Any party who fails [to timely file a brief in opposition] shall be deemed not to oppose such motion."), and also on the merits, and, following an independent review of the record, the court being in agreement with the magistrate judge that the *pro se* plaintiff's excessive force claim is both meritless and barred by the doctrine of qualified immunity, and it further appearing that the plaintiff has also failed to object to the report despite a generous extension of time in which to do

so, (see Doc. 151), and that there is no clear error on the face of the record,¹ see Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that “failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level”), it is hereby ORDERED that:

1. The report of the magistrate judge (Doc. 149) is ADOPTED in its entirety.
2. The defendants’ motion (Doc. 130) for summary judgment is GRANTED in its entirety.
3. Judgment is ENTERED in favor of the defendants and plaintiff’s complaint (Doc. 1) is DISMISSED.
4. The Clerk of Court is directed to CLOSE this case.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania

¹ When parties fail to file timely objections to a magistrate judge’s report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. Thomas v. Arn, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit expects courts to “afford some level of review to dispositive legal issues raised by the report.” Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that “[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” FED. R. CIV. P. 72(b), advisory committee notes; see also Henderson, 812 F.2d at 878-79 (stating that “the failure of a party to object to a magistrate’s legal conclusions may result in the loss of the right to de novo review in the district court”); Tice v. Wilson, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that the court’s review is conducted under the “plain error” standard); Cruz v. Chater, 990 F. Supp. 375-78 (M.D. Pa. 1998) (holding that the court’s review is limited to ascertaining whether there is “clear error on the face of the record”); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review the report and recommendation for “clear error”). The court has reviewed the magistrate judge’s report and recommendation in accordance with this Third Circuit directive.